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NO. 2363

United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

SAMUEL L. BOYD, as Trustee in Bankruptcy of THE LANE LUMBER COMPANY, LIMITED, a Corporation, Bankrupt,

Appellant,

v.

M. K. WALL,

Appellee.

In the Matter of THE LANE LUMBER COMPANY, LIMITED, a Corporation, Involuntary Bankrupt.

Upon appeal from the United States District Court for the District of Idaho, Northern Division.

Brief of Appellant, Samuel L. Boyd, Trustee.

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Filed this.....day of February, 1914.

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STATEMENT OF THE CASE.

The respondent, M. K. Wall, claims an unrecorded vendor's lien on certain property belonging to the bankrupt, which has been resisted by the trustee, the proceedings thereon are as follows:

On June 20, 1911, a petition was filed, by various creditors to have the Lane Lumber Company, Limited, a corporation, adjudged a bankrupt, (Trans. p. 34), July 29, 1911, the Lane Lumber Company was adjudged a bankrupt. (Trans. p. 33) On March 6, 1911, M. K. Wall conveyed to the said Lane Lumber Company the E½ NW¼, of Section 35, SE¼SW¼

of Section 26, Twp. 49 North, Range 2, W. B. M., Kootenai County, Idaho, for the agreed purchase price of $5000. (Trans. p. 32). M. K. Wall was secretary of the bankrupt, with full knowledge of the embarrassed financial condition, of the bankrupt, at the time of said transfer, which purchase and transfer was not authorized or ratified by the board of directors of the Lane Lumber Company. (Trans. p. 35). M. K. Wall, as an officer of the bankrupt, permitted said land to remain on the records unincumbered, except as to that certain mortgage and bond given to the Northern Trust Company and Augustus S. Peabody in 1908, originally for the sum of $125,000, which included after acquired property, which mortgage has been paid in full by the trustee. (Trans. p. 35). On September 22, 1911, Samuel L. Boyd qualified as trustee of the bankrupt and has continued to and is now acting as trustee. (Trans. p. 33) The trustee had no notice of said vendor's lien until it was filed with the Referee, Lawrence L. Lewis. (Trans. p. 34). On June 19, 1912, M. K. Wall filed his proof of secured debt, claiming $5000 as a vendor's lien against the above described property of the bankrupt, (Trans. p 33) under Sections 3441 and 3443, Idaho Revised Codes, which are in words and figures as follows:

"Sec. 3441. One who sells real property has a vendor's lien thereon, independent of possession, for

so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer."

"Sec. 3443. The liens of vendors and purchasers of real property are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith and for value."

The appraised value of the land on which the vendor's lien is claimed, placed thereon by the appraisers, appointed by the court, is $919. (Trans. p. 34). That on August 10, 1912, the trustee filed objections to the aforesaid proof of secured debt. (Trans. p. 23). The referee, overruled the objections and allowed the proof of secured debt, as a vendor's lien, on July 31, 1913. (Trans. p. 19). Petition for review was filed by the trustee September 3, 1913. (Trans p. 15). November 19, 1913, the Referee filed his report thereon, with the Clerk of the U. S. District Court. (Trans. p. 22). Hon. F. S. Dietrich, U. S. District Judge, after hearing, on December 2, 1913, rendered his memorandum decision affirming the referee in establishing said vendor's lien. (Trans. p. 25). Findings of Fact and Conclusions of Law, (Trans. p. 32) were caused to be filed by said District Judge on December 13, 1913, and Judgment thereon was filed December 23, 1913. (Trans. p. 36).

ASSIGNMENTS OF ERROR.

1. The court error in not deciding that M. K.

Wall, was estopped from asserting vendor's lien on account of his laches and his official relation to the bankurpt.

2. The court erred in sustaining the M. K. Wall vendor's lien claim, under Section 3441 and 3443, Idaho Revised Codes, against the contention of the trustee.

3. The court erred in not deciding that the trustee, under the Bankruptcy Act, held title to the land in controversy, paramount to M. K. Wall's vendor lien right.

4. That the court erred in not denying said vendor's lien.

5. That the decree of the District Court allowing said vendor's lien is against the law.

ARGUMENT.

Referring to the First Assignment of Error.

It is very apparent from the vendor lien claims pending against this estate that the vendor lien claimant, M. K. Wall, Secretary of the Bankrupt, for and on behalf of the bankrupt, was extremely active and zealous in obtaining titles to tracts of land by making small payments thereon and not protecting the vendors by collateral security. He knew the financial condition of the company. It must have been his ambition to make millions. He knew when he transferred his land to the bankrupt that the

credit world had a right to and would assume that ~~the vendors~~ he had been paid in full for ~~their~~ his land.

His very relation with the company and to its creditors, on account of the fraud worked upon them, should estop him from claiming his vendor's lien and defeated his right thereto.

When the trustee qualified on September 22, 1911, he took possession of the land covered by the purported vendor lien, retained the undisputed title thereto, administered and paid the taxes thereon, until the M. K. Wall vendor lien sprung up in June, 1912.

Extraordinary attacks against the title of the trustee and the uniform operation of the bankruptcy act has met with the disapproval of the Courts.

"A creditor of a bankrupt firm, even if entitled to maintain a petition to vacate the adjudication, cannot do so after the lapse of eight months, during which other rights have intervened, and without showing a good reason for the delay; and an ~~obliga~~ allegation that the facts stated in the petition have become known to him only recently is insufficient"

In re Ives 113 F. 911, C. C. A. 6th Circuit

REFERRING TO THE SECOND, THIRD, FOURTH AND FIFTH ASSIGNMENTS OF ERROR.

Art. 1, §8 Cl. 4 of the Constitution of the United

States, provides that Congress shall have power: "To establish a uniform rule of naturalization, and uniform laws on the subject of Bankruptcies throughout the United States."

"Congress is not forbidden to pass laws impairing the obligation of contracts, and a bankrupt act may provide for the discharge of a bankrupt from debts contracted before its passage and may destroy liens upon the bankrupt's property, whether created by contract, by statute or by judgment." There is no dispute as to this principle of law.

IT IS THE EVIL OF SECRET LIENS AND THE INJUSTICE WORKED UPON CREDITORS, WHO RELY UPON THE DEBTORS APPARENT OWNERSHIP, AGAINST WHICH THE BANKRUPTCY LAW HAS SET ITS FACE.

"HOW FAR ADOPTED IN THIS COUNTRY. —The doctrine of a vendor's lien for the purchase-money prevails in upwards of half in number of the States, and in the other States the doctrine has either been rejected from the beginning, or, having prevailed at one time, has since been expelled by statute, although, it may be that in a few states the question of its existence has not been definitely decided. In the courts of the United States the doctrine has never been affirmed, except where established by the local law of the different states. The doctrine even in those States that have adopted it, has frequently been criticised and deplored as inconsistent with the general policy prevailing in this country of making all matters of title depend upon record evidence.

The doctrine is no more satisfactory now than it was in Lord Eldon's time; in fact it is much less so. From the nature of the equity, there could be but few fixed rules regarding it; but it will be observed in following the Americao decisions, which are numerons, that there is hardly a rule upon the subject that has not been somewhat denied; that hardly any two States can be found in which the courts agree upon all the important points of the doctrine; and that the cases are not rare in which the decisions in the same States are irreconcilable. The remark of Lord Mansfield, that "the more we read, the more we shall be confounded," is not without its application here.

The inquiry in every case is, whether there are *other equities superior to this lien,* or *whether it has been waived by any act of the party claiming it.* "Its existence," said Mr. Justice Potter, "depends upon and is controlled by no well-settled rules, but, on the contrary, the existence of the lien is generally made to depend upon the peculiar state of facts and circumstances surrounding the particular case; that is, *whether or not a case of natural equity is established, and, if so, whether it is not made to yield to higher or superior equities in some other person*; whether the party is not to be regarded as having waived it, or as having intended to waive or pospone it to another equitv; or *whether by the acts or ommissions to act, or by the neglect of the party claiming such lien to enforce it within a reasonable time*, the right is not lost as being the superior claim. These considerations control and vary the result as equity demands."

Jones on Liens, 2nd Ed. Vol. 2, Sec. 1063, p. 3.

"EFFECTS OF FRAUD. The equity acquired by a party who has been mislead is superior to the interest in the same subject matter of the one who willfully procured or suffered him to be thus mislead. The following example illustrates the operation of this rule, and the principal underlying it may be

generalized and applied to all analogous cases. A, being about to part with value to B upon the security of B's estate, informs C of his intention, and asks C whether he has any encumbrance on the estate; C denies that he has any, and A, relying upon his denial, parts with money or other value to B; in fact, C had at the time a mortgage or other incumbrance upon the estate; this mortgage or lien, although prior in time, would, by reason of C's fraud be postponed to the subsequent interest acquired by A. The basis of this rule is the conduct which equity regards as constituting fraud, either an actual intention to mislead, or that gross negligence which produces all the effects and merits all the blame of international deception. *It is not, however, necessary that the party having an interest or title, under such circumstance, when applied to, should use positive misrepresentations or expressly deny the existence of his right; it is sufficient if he refrains from disclosing his claim, and suffer a third person to deal with the property as his own, or to acquire an interest in or lien upon it; he will not be permitted to set up or enforce his interest in preference to that obtained by the person whom he has suffered to be mislead by his silence."*

Ed.

Pomeroy's Equity Jur. 3rd. Vol. 2, Sec. 686 p. 1194.

"EFFECT OF FRAUD OR NEGLIGENCE UPON PRIORITIES. A priority which would otherwise have existed may also be disturbed and defeated by fraud or negligence in obtaining the interest *or in failing to secure it properly.* It is therefore a settled doctrine, that among successive equities otherwise equal, and also between a legal title or superior equitable interest earlier in time and subsequent equity, *the holder of the interest which is prior in time and would be prior in right may lose his precedence, and be postponed to the subsequent one by his own fraud or negligence,* or that of his agent. The same rule applies to the holder of

a subsequent legal estate who would otherwise have the precedence over a prior equitable interest; he may be posponed by reason ot his neglect or fraud. While the general rule has been fully adopted by the American Courts, the cases involved it are much less frequent in this country than in England, *because almost every kind of interest in land is within the operation of the recording acts, and may be protected by a record.* Most instances of laches, therefore, coming before our courts have arisen from a neglect to record an instrument, or to comply with the provisions of some statute analogous to that of recording. The effects of negligence and want of diligence in postponing or even defeating the rights of an assignee or a thing in action, earlier in point of time, have already been described. One instance which may be regarded as an example of fraud, although the actual fraudulent intent is essential, is, where a prior encumbrancer, upon inquiry being made by a person interested, denies the existence of his lien, or where the owner of the legal estate denies his title under like circumstance, *or even keep silent and does not announce his title to an innocent person who is making expenditures, or advancing money upon the supposed security of the property.*"

Pomeroy's Equity Jur. 3rd. Ed. Vol. 2, Sec. 731, p. 1293.

The Supreme Court of the United States, in 1822, speaking through Chief Justice Marshall, took occasion to place its stamp of disapproval on vendor's liens.

"To the world the vendee appears to hold the estate devested of any trust whatever; the credit is given to him in the confidence that the property is his own in equity, as well as at law. *A vendor relying upon his lein, ought to reduce it to a mort-*

gage, so as to give notice of it to the world. If he does not, he is, in some degree, eccessory to the fraud committed on the public. by an act which exhibits the vendee as the complete owner of an estate on which he claims a secret lien. It would seem inconsistent with the principles of equity, and with the general spirit of our laws, that such a lien should be set up in a court of chancery to the *exclusion of bona fida creditors.*"

"The lien of the vendor, if in the nature of a trust, *is a secret trust;* and, although to be preferred to any other subsequent equal equity unconnected with a legal advantage, or equitable advantage, which gives a superior claim to the legal estate, will be posponed to a subsequent equal equity connected with such advantage."

Bayley v. Greenleaf, 7 Wheat. 46; 5 L Ed. 393.

In Tennessee, in 1871, we find a decision, following Bayley v. Greenleaf, supra. where a vendor's lien is given by statute. Vide Code of Tennessee, §§ 3563, 3564.

"The equitable lien of the vendor of land, for the unpaid purchase-money, *is subordinate to a specific lien acquired by a creditor of the vendee, whether with or without notice, before proceedings are instituted to enforce such equitable liens.*"

Fain v. Inman, 19 Am. Rep. 577, Extra Annoted.

Under the present Bankruptcy Act, of 1898, certoin decisions were rendered by the courts, which worked a great hardship on *unsecured creditors.*

Butler v. Baudouine, 82 N. Y. Supp. 773, affirmed 69 N. E. 1121, in 1903.

York Mfg. Co., v, Cassell, 201 U. S. 344, 50 L. Ed. 782, decided in 1906.

When courts have placed a certain construction upon a statute and the law making body decides that the application of the statute, as construed by the courts, has miscarried or given rise to vicious practices in connection with its subject matter and the law making body wishes to change the effect of the statute, as construed by the courts, and their intention is clearly expressed in the Committee reports and debates, this court can draw no other conclusion than that it is its duty to interpret an amendment to such statute in the light of the expressed intention of the law making body.

This court may say, is it your intention that the court shall be guided by congressional intention or presumed congressional intention as expressed in committee reports, regardless of the wording or phraseology of the act? No, certainly not, but we do contend that when a law is so framed as to yield to a construction which will carry out the intention of congress, as expressed and adopted in its committees' reports, then it is the duty of the court to so interpret the amendment as to give expression and effect to the intention of congress so expressed and approved in said reports.

This is the recognized economic theory upon

which the legislative and judicial functions of this government are co-ordinated.

It is doubtless natural for the judicial body to usurp the functions of the legislative department, and this usurpation has given rise to the present criticism by the people, of whom both departments are the creatures.

Congress in contemplation of the amendment to 47 a (2) had in mind certain abuses which had grown out of the construction placed upon the above section by the courts as evidenced by York Mfg. Co., v. Cassell, supra.

Both this court and appellant are familiar with the holdings of the courts of California and various other states, in their recent decisions upholding the equitable theory of the vendor's lien, but this court is also cognizant of the fact that the state courts in all of these cases were interpreting the will of their legislators as expressed in vendor lien statutes; they were not called to pass upon the effects of the United States Bankruptcy Act, as amended, on said statutes; this court is now presented with the question of interpretingthis amendment in order to give uniform effect to the expressed intention of the Congress of the United States, which act, as amended, was drafted to counteract the vicious effect of the various state statutes

in their application to the Bankruptcy Act and interstate transactions.

The National Bankruptcy Act is in direct controvention of the common law vendor lein rights and other statutory rights, and could not have been enacted or enforced except by virtue of Art. 1. § 8, Clause 4 of the Constitution of the United States.

Congress determined to cure the glaring defects in the Bankruptcy Act and in 1910 enacted the following amendment to Section 47:

"And such trustee, as to all property in custody or coming into custody of the bankruptcy court, shall be deemed vested with all *rights, remedies and powers of a criditor holding a lien by legal or equitable proceedings thereon;* and also, as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a judgment creditor holding an execution duly returned unsatisfied."

The Circuit Court of Appeals, for the Second Circuit, In re Morris, 204 F. 770, in 1913, discusses the effects of Butler v. Baudouine, supra, on the amendment to Section 47, supra, and the immateriality, of the fact that the amendment was not made a part of Section 70.

This Court, in May 1913, held, referring to Section 47, supra;

"It is the purpose of this amendment to vest in the trustee for the interest of all creditors the potential rights of creditors possessing or holding liens upon the property coming into his custody by legal or equitable proceedings. The trustee no longer stands in the shoes merely of the bankrupt, with the limited rights of the bankrupt to attack unrecorded liens which may be valid and unimpeachable by such bankrupt; but the amendment by operation of law vests in him a lien equivalent to such as would be acquired by legal or equitable proceedings upon the property coming into his custody by virtue of the bankruptcy proceedings. "The class of cases, unprovided for by the original act, and intended to be reached by the amendment," says Mr. Collier in his work on Bankruptcy (9th Ed.) p. 659, "was that in which no creditors had acquired liens by legal or equitable proceedings and to vest in the trustee for the interest of all creditors the potential rights of creditors potential with such liens." "This provision of the Bankruptcy Act," says Winter, Judge, in re Hartdagen (D. C.) 189 Fed. 546, 549 26 Am. Bankr. Rep. 532, 535, "puts the trustee, in so far as the assets of the estate are concerned, in the position of a lien creditor," distinguishing the case of York Mfg. Co. v. Cassell, 201 U. S. 344, 26 Sup. Ct. 481, 50 L. Ed. 782, and others of its character, which it is thought inspired the amendment."

In re Raymond Box Co., 205 F. 618-622.

The Supreme Court of Idaho has had occasion to comment on Section 47, as amended, supra:

"The effect of the amendment of 1910 to Section 47 of the Bankruptcy Act is that the trustee may now challange any security or conveyance that a lien or judgement creditor might have challenged had the bankruptcy not intervened."

Corey v. Blackwell Lumber Company, 135 P. 742.

It will be observed that secret liens have been in

bad repute in the United States Supreme Court since 1822; that Tennessee, in 1871, followed Bayley v. Greenleaf, supra; that Congress in 1910 decided to take away the advantage given by the Supreme Court of the United States, in York Mfg. Co. v. Cassell, supra, to holders of unrecorded liens.

In Kerr v. Finch, 135 P. 1165, our court said:

"Precedent is and should be strongly persuasive with the courts, but never controlling, and, when the reason for it ceases to exist, or it fails to accomplish justice, it should be disregarded."

"It is not a lien until a bill has been filed to assert it. Before this is done, it is a mere equity or capacity to acquire a lien and to have a satisfaction of it.

If this floating equity, misnamed in judicial parlance the 'vendor's lien', be not quite a myth, but a mere capacity in the vendor to acquire a lien if he chooses, then this same capacity belongs to others who, as creditors, have rights just as meritorious as his. And we hold that the simple knowledge on the part of a creditor that the vendor, sleeping from year to year upon his rights, may if he chooses, acquire a lien, as the creditor himself is about to do, cannot, even in the forum of conscience, impair the value acquired by the creditor. In such case there is no mala fides.

The vendor who sells and conveys real estate, without reserving a specific lien, may enforce his equity, as against his vendee and mere volunteers, at any time before conveyance; *but, as against purchasers from and creditors of the vendee, he comes too late, if he has delayed filing his bill and fixing a charge on the property until after they have acquired rights, and evidenced them through the*

public records of the state, as the law provides."

Robinson v. Owens et. al, 52 S. W. 870 (Tenn.) 1899.

The Circuit Court of Appeals, for the 6th Circuit, referring to vendor liens, termed them as:

"The most fragile of all liens known to a court of equity, one most easily displaced and never existing except by the clearest implication of the intention of the party that it should stand as a security for the purchase money yet unpaid."

Blake v. Pine Mountain Iron & Coal Co., 76 F. 624-642, 6th Circuit.

"There should be uniformity throughout the country, under which there will be an equitable distribution of the bankrupts property whereby he may not be able to give preferences to relatives and friends, so that the nearby creditor cannot be given a preference over the creditor far away, who has possibly furnished nine-tenths of the capital upon which the debtor has been working. He should be put in the same situation as those who are on the ground, so he can receive equal privileges." Remarks of Mr. Tirrell, Chairman of the Judiciary Commitee in the House of Representatives, in his remarks in support of the amendments of 1910. Congressional Record Vol. 45, Part 3, p. 2265.

To prove to this tribunal that our contention against the vicious unrecorded vendor lien claimed against this estate to the extent of $5,000 is correct, the following is the Committe Report from the House, adopted by the Senate in toto, bearing upon the above section 47 which *we claim should forever destroy the most obnoxious and detestable lien known to the credit world.*

"One of the most important decisions under the

present law is York Manufacturing Company v. Cassell (201 U. S. 344), wherein it was held that property conveyed by an unrecorded instrument, which would have been void in the state courts had the property been taken by an assignee or receiver, or levied upon by attachment or execution, was not void where possession was taken by a receiver or trustee in bankruptcy, the Supreme Court holding that the trustee stood precisely in the bankrupt's shoes with regard to the unrecorded instrument, even though in the state courts had the seizure been made by the assignee in insolvency, or receiver, or by the sheriff under execution or attachment, the unrecorded lien would have been void as against creditors. By this ruling the trustee in bankruptcy is held to be vested solely with the bankrupt's own title, except as to property fraudulently transferred, and as to property which (within four months before the bankruptcy) has been seized by a creditor by legal process, or voluntarily transferred to him by way of preference.

The trustee, under the present law, does not (except as to fraudulently transferred property) take the rights that a creditor under state law might have acquired, but only such as some creditor has actually acquired by levy of process, and then only in the event such levy has occurred within four months before the bankruptcy and the lien of the levy (otherwise void under section 67 f) been preserved for the benefit of the trustee by order of the court, and then it is void only to the extent of the execution or attachment levied. *In this way a distinct advantage is given in bankruptcy to the holder of unrecorded liens.* The creditors' hands meanwhile are tied from making any levy, because the separate rights of the creditors have become vested in the trustee for all; besides which, as to property already in the custody of the bankruptcy court, of course individual creditors would be in contempt of court should they levy thereon. *Thus the evil of secret liens has continued. It is this evil and injustice worked upon creditors who rely on the debtors' ap-*

parent ownership against which the bankruptcy law has set its face.

The proposed amendment, whilst covering the defect named, at the same time carefully guards the rights of all parties. It is evident that in the proposed amendment attempt is made to give effect to two ideas quite distinct: First, that as to the property in the custody of the bankrupt court the bankruptcy trustee shall be considered to have the same title that a creditor holding an execution or other lien by legal or equitable proceedings levied upon that property would have under the state law; and, second, that as to property not in the custody of the bankruptcy court the trustee should stand in the position of a judgment creditor holding an execution returned unsatisfied, thus entitling him to proceed precisely as an individual creditor might have done to subject assets. In this way, in effect, proceedings in bankruptcy will give to the creditors all the rights that creditors under the state law might have had had there been no bankruptcy and from which they are debarred by the bankruptcy—certainly a very desirable and eminently fair position to be granted to the trustee."

Some of the ablest lawyers in America assisted in drafting, and approved, the amendment to section 47, and, being experienced and practical men, certainly had in mind the rule laid down in Pomeroy, § 731, supra, in order to protect creditors who had advanced money on the record ownership of property; it was also intended that its operation should be uniform throughout the United States, appreciating that a secret lien is a dangerous one and not entitled to favor, especially now that every facility is offered for the recording and preservation of liens, or of giv-

ing notice to the world of their existence.

Under the state statute a mortgage, real or personal, is valid both as to past and present consideration. The Bankrupcy Act comes along and decrees that it is not good, under the statute, except as to the present consideration, thereby repealing in part the state statute during bankruptcy proceedings.

There are many other instances, too numerous, to mention, where state statutes have become inoperative after bankruptcy.

Practically all of the amendments, of 1910, to the Bankruptcy Act, show a studied intention by Congress to deprive all creditors of the statutory advantages which are used to secure unjust and inequitable legal advantages over other creditors, which advantages are subversive of the plain purpose of the law. These amendments were made, as the committee report recites, for the purpose of curing these abuses which had crept into the Bankruptcy Jurisprudence.

SIX HUNDRED SIXTY acres of the bankrupt's land is now in litigation, under the vendor lien claims. The total amount claimed by the lien claimants is $10,857.08 and the appraised value of the lands covered thereby is $4300.00.

As between M. K. Wall, and his vendors lien, and the trustee, and his Federal Statutory lien, the

question resolves itself as to whose lien is entitled, under all the circumstances, to priority.

This leads us to the discussion of a maxim of equity. "Equity aids the vigilant, not those who slumber on their rights." The creditors were vigilant by having the Lane Lumber Company adjudged an involuntary bankrupt before M. K. Wall attempted to assert his vendor's lien. See Pomeroy §731, supra.

The trustee takes a stand against this kind of lien because the bankruptcy law was intended for honest, unfortunate business people. If this court sustains the vendors lien it will start an avalanche of fraud. The credit of honest owners of land will be greatly impaired. There will be no check on a person buying 10,000 acres of land worth $300,000 for one-tenth down, being $30,000, giving promissory notes for nine-tenths of the purchase price, being $270,000 thereafter borrowing $75,000 on unsecured commercial paper and go into bankruptcy. The person who furnishes the $75,000 will lose all his collatteral, by vendor liens, and the shrewd schemer will make a "clean up" of $45,000 net.

In order to put a uniform construction in all the states on the effect of the Section 47, as amended, it is necessary for this court to hold that unasserted and unrecorded vendor liens, no matter in what state

they spring up after bankruptcy, are null and void as against the trustee under the National Bankruptcy Act.

We submit that in fairness to the credit world, and in order to make the operation of the bankruptcy law uniform throughout these United States, the vendor's lien claim of M. K. Wall, in the sum of $5,000, should be disallowed and the judgement of the lower court reversed.

Attention is respectfully called to General Orders in Bankruptcy XXXVI-3.

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A copy of the foregoing brief received this .....day of Feb., 1914, at Coeur d'Alene, Idaho.

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